IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

Crl.MC.No. 217 of 2007()

AGST. THE ORDER IN **C.M.P.NO.8918/06 IN L.P.NO.19/01 IN** CC.338/1996 & 562/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEYYATTINKARA

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PETITIONER:

NADARAJAN ACHARI,
S/O.PADMANABHAN ACHARI,
SIVAMANGALAM, POOVAR ROAD,
NEYYATTINKARA VILLAGE.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENT:

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1. THE STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. MANOHARAN, S/O.MURUGAN, ATTUPALATHIL VEEDU,
KALKULAM, KANYAKUMARI.

3. THAMPYBAL, S/O.VELUPILLAI, T.C.40/1281 CHALAI,
MANACAUD, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SMT.LATHA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.217 of 2007

Dated this the 25th day of January 2007

O R D E R

The petitioner is the defacto complainant in a prosecution interalia under Sections 457 and 380 read with 34 I.P.C. There were two accused persons. The alleged incident took place on 30/09/1992. The petitioner's jewellery shop was allegedly broken open and theft was committed of costly gold and silver ornaments. There were two accused persons. Only the second accused was available for trial. They have already been tried and acquitted as per judgment dated 24/08/2000. Mos 1 to 13 are the ornaments allegedly thieved from the possession of the petitioner. As the first accused is absconding, the case against him was split up and the same is now in the list of long pending cases. The petitioner applied for release of the ornaments. The learned Magistrate, taking note of the fact that the case against the first accused is still not disposed of and remains in the long pending register, proceeded to pass the impugned order (copy of which is produced as Annexure B), dismissing the said prayer. Aggrieved by the said dismissal, the petitioner has come to this court.

2. The petitioner's plight certainly deserves sympathy. The offenders allegedly acted against his interest on 30/09/1992. The system has thereafter been guilty of being unsympathetic to his plight. The ornaments have not been released to the petitioner so far. Indefinite waiting for the apprehension of the first accused will be non-productive. At any rate, the petitioner may not be left to suffer for that reason.

3. Notice has been given to the learned Public Prosecutor. The learned Public Prosecutor only submits that the ornaments may be necessary for the trial of the first accused if and when he is apprehended. I have no hesitation whatsoever to agree that if the petitioner is the person entitled to possession of the ornaments concerned, the same will have to be released to the petitioner notwithstanding the fact that the case against the first accused will have to be taken up for consideration at a later point of time. The decision in Sunderbhai Ambalal Desai v. State of Gujarat [AIR 2003 638] makes the position very clear. Observing the formalities and the safeguards stipulated in Sunderbhai Ambalal Desai v. State of Gujarat [AIR 2003 638] certainly the ornaments which the petitioner is entitled to keep

possession of can be released to the petitioner. The reasons shown by the learned Magistrate cannot, in these circumstances, be held to be sufficient or satisfactory. The impugned order, therefore, deserves to be set aside.

4. In the result, this petition is allowed. The impugned order is set aside. The learned Magistrate is directed to consider the application of the petitioner again and pass appropriate orders in the light of the observations made above and in the light of the decision in Sunderbhai Ambalal Desai v. State of Gujarat [AIR 2003 638]. Orders shall be passed on petitioner's application i.e. C.M.P.NO.8918/2006 by the learned Magistrate within a period of ten days of the date on which copy of this order is placed by the learned Magistrate.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006